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and any subsequent changes that modify any element of the agency's system(s) that is subject to a regulatory requirement in this part;

(b) Transfer the employee's most recent ratings of record, and any subsequent performance ratings, when an employee transfers to another agency or is assigned to another organization within the agency in compliance with part 293 of this chapter and instructions in the OPM Operating Manual, *THE GUIDE TO PERSONNEL RECORDKEEPING*, for sale by the U.S. Government Printing Office, Superintendent of Documents;

(c) Communicate with supervisors and employees (e.g., through formal training) about relevant parts of its performance appraisal system(s) and program(s);

(d) Evaluate the performance appraisal system(s) and performance appraisal program(s) in operation in the agency;

(e) Report ratings of record data to the Central Personnel Data File in compliance with instructions in the OPM Operating Manual, *FEDERAL WORKFORCE REPORTING SYSTEMS*, for sale by the U.S. Government Printing Office, Superintendent of Documents;

(f) Maintain and submit such records as OPM may require; and

(g) Take any action required by OPM to ensure conformance with applicable law, regulation, and OPM policy.

§ 430.210 OPM responsibilities.

(a) OPM shall review and approve an agency's performance appraisal system(s).

(b) OPM may evaluate the operation and application of an agency's performance appraisal system(s) and program(s).

(c) If OPM determines that an appraisal system or program does not meet the requirements of applicable law, regulation, or OPM policy, it shall direct the agency to implement an appropriate system or program or to take other corrective action.

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Subpart C—Managing Senior Executive Performance

SOURCE: 80 FR 57694, Sept. 25, 2015, unless otherwise noted.

§ 430.301 General.

(a) *Statutory authority.* Chapter 43 of title 5, United States Code, provides for the establishment of Senior Executive Service (SES) performance appraisal systems and appraisal of senior executive performance. This subpart prescribes regulations for managing SES performance to implement the statutory provisions at 5 U.S.C. 4311–4315.

(b) *Purpose.* In order to improve the overall performance of Government, agencies must establish performance management systems that hold senior executives accountable (within their assigned areas of responsibility and control) for their individual performance and for organizational performance by—

(1) Encouraging excellence in senior executive performance;

(2) Aligning executive performance plans with the results-oriented goals required by the Government Performance and Results Act Modernization Act of 2010 (GPRAMA) or other strategic planning initiatives;

(3) Setting and communicating individual and organizational goals and expectations that clearly fall within the executive's area of responsibility and control;

(4) Reporting on the success of meeting organizational goals (including any factors that may have impacted success);

(5) Systematically appraising senior executive performance using measures that balance organizational results with customer and employee perspectives, and other perspectives as appropriate; and

(6) Using performance appraisals as a basis for pay, awards, development, retention, removal, and other personnel decisions.

(c) *Savings provision.* Agencies without OPM approval to use the basic SES appraisal system issued by U.S. Office of Personnel Management (OPM) and the Office of Management and Budget on January 4, 2012, must design, obtain

OPM approval for, and implement systems conforming to the requirements of this subpart no later than one year after October 26, 2015. No provision of this subpart will affect any administrative proceedings related to any action initiated under a provision of this chapter before October 26, 2015.

§ 430.302 Coverage.

This subpart applies to—

- (a) All senior executives covered by subchapter II of chapter 31 of title 5, United States Code; and
- (b) Agencies as defined in § 430.303.

§ 430.303 Definitions.

In this subpart—

Agency means an agency as that term is defined in 5 U.S.C. 3132(a)(1) and an Office of Inspector General, which is a separate agency for all provisions of the Senior Executive Service under the Inspector General Act of 1978 (5 U.S.C. App 6(d)).

Annual summary rating means the overall rating level that an appointing authority assigns at the end of the appraisal period after considering (1) the initial summary rating, (2) any input from the executive or a higher level review, and (3) the applicable Performance Review Board's recommendations. This is the official final rating for the appraisal period.

Appointing authority means the department or agency head, or other official with authority to make appointments in the Senior Executive Service (SES).

Appraisal period means the established period of time for which a senior executive's performance will be appraised and rated.

Critical element means a key component of an executive's work that contributes to organizational goals and results and is so important that unsatisfactory performance of the element would make the executive's overall job performance unsatisfactory.

Initial summary rating means an overall rating level the supervisor derives, from appraising the senior executive's performance during the appraisal period in relation to the critical elements and performance standards and requirements, and forwards to the Performance Review Board.

Oversight official means the agency head or the individual specifically designated by the agency head who provides oversight of the performance management system and issues performance appraisal guidelines.

Performance means the accomplishment of the work described in the senior executive's performance plan.

Performance appraisal means the review and evaluation of a senior executive's performance against critical elements and performance standards and requirements.

Performance management system means the framework of policies and practices that an agency establishes under subchapter II of chapter 43 of title 5, United States Code, subpart A, and this subpart for planning, monitoring, developing, evaluating, and rewarding both individual and organizational performance and for using resulting performance information in making personnel decisions.

Performance requirement means a description of what a senior executive must accomplish, or the competencies demonstrated, for a critical element. A performance requirement establishes the criteria to be met to be rated at a specific level of performance and generally includes quality, quantity, timeliness, cost savings, manner of performance, or other factors.

Performance standard means a normative description of a single level of performance within five such described levels of performance ranging from unsatisfactory performance to outstanding performance. Performance standards provide the benchmarks for developing performance requirements against which actual performance will be assessed.

Progress review means a review of the senior executive's progress in meeting the performance requirements. A progress review is not a performance rating.

Senior executive performance plan means the written critical elements and performance requirements against which performance will be evaluated during the appraisal period by applying the established performance standards. The plan includes all critical elements,

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performance standards, and performance requirements, including any specific goals, targets, or other measures established for the senior executive.

Strategic planning initiatives means agency strategic plans as required by the GPRA Modernization Act of 2010, annual performance plans, organizational work plans, and other related initiatives.

System standards means the OPM-established requirements for performance management systems.

§ 430.304 SES performance management systems.

(a) To encourage excellence in senior executive performance, each agency must develop and administer one or more performance management systems for its senior executives in accordance with the system standards established in § 430.305.

(b) Performance management systems must provide for—

(1) Identifying executives covered by the system;

(2) Monitoring progress in accomplishing critical elements and performance requirements and conducting progress reviews at least once during the appraisal period, including informing executives on how well they are performing;

(3) Establishing an official performance appraisal period for which an annual summary rating must be prepared;

(4) Establishing a minimum appraisal period of at least 90 days;

(5) Ending the appraisal period at any time after the minimum appraisal period is completed, but only if the agency determines there is an adequate basis on which to appraise and rate the senior executive's performance and the shortened appraisal period promotes effectiveness; and

(6) Establishing criteria and procedures to address performance of senior executives who are on detail, temporarily reassigned, or transferred as described at § 430.312(c)(1), and for other special circumstances established by the agency.

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§ 430.305 System standards for SES performance management systems.

(a) Each agency performance management system must incorporate the following system standards:

(1) Use critical elements based on OPM-validated executive competencies to evaluate executive leadership and results, including the quality of the executive's performance;

(2) Align performance requirements with agency mission and strategic planning initiatives;

(3) Define performance standards for each of the summary rating performance levels, which also may be used for the individual elements or performance requirements being appraised;

(4) Appraise each senior executive's performance at least annually against performance requirements based on established performance standards and other measures;

(5) Derive an annual summary rating through a mathematical method that ensures executives' performance aligns with level descriptors contained in performance standards that clearly differentiate levels above fully successful, while prohibiting a forced distribution of rating levels for senior executives;

(6) Establish five summary performance levels as follows:

(i) An outstanding level;

(ii) An exceeds fully successful level;

(iii) A fully successful level;

(iv) A minimally satisfactory level;

and

(v) An unsatisfactory level;

(7) Include equivalency statements in the system description for agency-specific terms for the five summary performance levels aligning them with the five performance levels required in § 430.305(a)(6); and

(8) Use performance appraisals as a basis to adjust pay, reward, retain, and develop senior executives or make other personnel decisions, including removals as specified in § 430.312.

(b) An agency may develop its own performance management system for senior executives in accordance with the requirements of this section.

(c) OPM may establish, and refine as needed, a basic performance management system incorporating all requirements of this section, which agencies may adopt, with limited adaptation,

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for performance management of its senior executives.

§ 430.306 Planning and communicating performance.

(a) Each senior executive must have a performance plan that describes the individual and organizational expectations for the appraisal period that clearly fall within the senior executive's area of responsibility and control.

(b) Supervisors must develop performance plans in consultation with senior executives and communicate the plans to them in writing, including through the use of automated systems, on or before the beginning of the appraisal period.

(c) A senior executive performance plan must include—

(1) *Critical elements.* Critical elements must reflect individual performance results or competencies as well as organizational performance priorities within each executive's respective area of responsibility and control, and be based on OPM-validated executive competencies.

(2) *Performance standards.* Performance plans must include the performance standards describing each level of performance at which a senior executive's performance can be appraised. Performance standards describe the general expectations that must be met to be rated at each level of performance and provide the benchmarks for developing performance requirements.

(3) *Performance requirements.* At a minimum, performance requirements must describe expected accomplishments or demonstrated competencies for fully successful performance by the executive. An agency may establish performance requirements associated with other levels of performance as well. These performance requirements must align with agency mission and strategic planning initiatives. Performance requirements must contain measures of the quality, quantity, timeliness, cost savings, or manner of performance, as appropriate, expected for the applicable level of performance.

(d) Agencies may require a review of senior executive performance plans at the beginning of the appraisal period to ensure consistency of agency-specific

performance requirements. Such reviews may be performed by the Performance Review Board (PRB) or another body of the agency's choosing.

§ 430.307 Monitoring performance.

Supervisors must monitor each senior executive's performance throughout the appraisal period and hold at least one progress review. At a minimum, supervisors must inform senior executives during the progress review about how well they are performing with regard to their performance plan. Supervisors must provide advice and assistance to senior executives on how to improve their performance. Supervisors and senior executives may also discuss available development opportunities for the senior executive.

§ 430.308 Appraising performance.

(a) Agencies must establish appropriate timelines for communicating performance plans, conducting appraisals, and assigning and communicating annual summary ratings.

(b) At least annually, agencies must appraise each senior executive's performance in writing, including through the use of automated systems, and assign an annual summary rating at the end of the appraisal period.

(c) Agencies must appraise a senior executive's performance on the critical elements and performance requirements in the senior executive's performance plan.

(d) Agencies must base appraisals of senior executive performance on both individual and organizational performance as it applies to the senior executive's area of responsibility and control, taking into account factors such as—

(1) Results achieved in accordance with agency mission and strategic planning initiatives;

(2) Overall quality of performance rendered by the executive,

(3) Performance appraisal guidelines that must be based upon assessments of the agency's performance and are provided by the oversight official to senior executives, rating and reviewing officials, PRB members, and appointing authorities at the conclusion of the appraisal period and before completion of the initial summary ratings;

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- (4) Customer perspectives;
- (5) Employee perspectives;
- (6) The effectiveness, productivity, and performance results of the employees for whom the senior executive is responsible;
- (7) Leadership effectiveness in promoting diversity, inclusion and engagement as set forth, in part, under section 7201 of title 5, United States Code; and
- (8) Compliance with the merit system principles set forth under section 2301 of title 5, United States Code.

§ 430.309 Rating performance.

(a) When rating senior executive performance, each agency must—

(1) Comply with the requirements of this section, and

(2) Establish a PRB as described at § 430.311.

(b) Each performance management system must provide that an appraisal and rating for a career appointee's performance may not be made within 120 days after the beginning of a new President's term.

(c) When an agency cannot prepare an annual summary rating at the end of the appraisal period because the senior executive has not completed the minimum appraisal period or for other reasons, the agency must extend the executive's appraisal period. Once the appropriate conditions are met, the agency will then prepare the annual summary rating.

(d) Senior executive performance appraisals and ratings are not appealable.

(e) Procedures for rating senior executives must provide for the following:

(1) *Initial summary rating.* The supervisor must develop an initial summary rating of the senior executive's performance, in writing, including through the use of automated systems, and share that rating with the senior executive. The senior executive may respond in writing.

(2) *Higher-level review (HLR).* A senior executive may ask for a higher-level official to review the initial summary rating before the rating is given to the PRB. The agency must provide each senior executive an opportunity for review of the initial summary rating by an employee, or (with the consent of

the senior executive) a commissioned officer in the uniformed services on active duty in the agency, in a higher level in the agency.

(i) A single review by an official at a higher level who did not participate in determining the executive's initial summary rating will satisfy this requirement. An official providing HLR may not change the initial summary rating but may recommend a different rating to the PRB. HLR may be provided by an official who is at a higher level in the agency than the appointing authority who will approve the final rating under paragraph (e)(4) of this section.

(ii) When an agency cannot provide review by a higher-level official for an executive who receives an initial summary rating from the agency head because no such official exists in the agency, the agency must offer an alternative review as it determines appropriate, except that the review may not be provided by a member of the PRB or an official who participated in determining the initial summary rating.

(iii) If a senior executive declines review by agency-designated higher-level officials, the agency may offer an alternative review but it not obligated to do so. The agency must document the executive's declination of the HLR opportunity provided by the agency before offering an alternative review.

(iv) Copies of findings and recommendations of the HLR official or the official performing an alternative review under paragraph (e)(2)(ii) through (iii) of this section must be given to the senior executive, the supervisor, and the PRB.

(3) *PRB review.* The PRB must receive and review the initial summary rating, the senior executive's response to the initial rating if made, and findings and recommendations of any HLR or any alternative review under paragraph (e)(2) of this section before making recommendations to the appointing authority, as provided in § 430.311.

(4) *Annual summary rating.* The appointing authority must assign the annual summary rating of the senior executive's performance after considering the applicable PRB's recommendations. This rating is the official final rating for the appraisal period and

must be communicated to the executive in writing, including through the use of automated systems, in accordance with the timelines developed under § 430.308(a).

(5) *Shortened appraisal periods.* The procedures of this section apply whenever an agency terminates an appraisal period under § 430.304(b)(5).

§ 430.310 Details and job changes.

(a) When a senior executive is detailed or temporarily reassigned for 120 days or longer, the gaining organization must set performance goals and requirements for the detail or temporary assignment. The gaining organization must appraise the senior executive's performance in writing, including through the use of automated systems, and this appraisal must be considered when deriving the initial summary rating.

(b) When a senior executive is reassigned or transferred to another agency after completing the minimum appraisal period, the supervisor must appraise the executive's performance in writing, including through the use of automated systems, before the executive leaves and provide this information to the executive.

(c) The most recent annual summary rating and any subsequent appraisals must be transferred to the gaining agency or organization. The gaining supervisor must consider the rating and appraisals when deriving the initial summary rating at the end of the appraisal period.

§ 430.311 Performance Review Boards (PRBs).

Each agency must establish one or more PRBs to make recommendations to the appointing authority on the performance of its senior executives.

(a) *Membership.* (1) Each PRB must have three or more members who are appointed by the agency head, or by another official or group acting on behalf of the agency head. Agency heads are encouraged to consider diversity and inclusion in establishing their PRBs.

(2) PRB members must be appointed in a way that assures consistency, stability, and objectivity in SES performance appraisal.

(3) When appraising a career appointee's performance or recommending a career appointee for a performance-based pay adjustment or performance award, more than one-half of the PRB's members must be SES career appointees.

(4) The agency must publish notice of PRB appointments in the FEDERAL REGISTER before service begins.

(b) *Functions.* (1) Each PRB must consider agency performance as communicated by the oversight official through the performance appraisal guidelines when reviewing and evaluating the initial summary rating, any senior executive's response, and any higher-level official's findings and recommendations on the initial summary rating or the results of an alternative review. The PRB may conduct any further review needed to make its recommendations. The PRB may not review an initial summary rating to which the executive has not been given the opportunity to respond in writing, including through the use of automated systems.

(2) The PRB must make a written recommendation, including through the use of automated systems, to the appointing authority about each senior executive's annual summary rating, performance-based pay adjustment, and performance award.

(3) PRB members may not take part in any PRB deliberations involving their own appraisals, performance-based pay adjustments, and performance awards.

§ 430.312 Using performance results.

(a) Agencies must use performance appraisals as a basis for adjusting pay, granting awards, retaining senior executives, and making other personnel decisions. Performance appraisals also will be a factor in assessing a senior executive's continuing development needs.

(b) Agencies are required to provide appropriate incentives and recognition (including pay adjustments and performance awards under part 534, subpart D) for excellence in performance.

(c) A career executive may be removed from the SES for performance reasons, subject to the provisions of part 359, subpart E, as follows:

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(1) An executive who receives an unsatisfactory annual summary rating must be reassigned or transferred within the SES, or removed from the SES;

(2) An executive who receives two unsatisfactory annual summary ratings in any 5-year period must be removed from the SES; and

(3) An executive who receives less than a fully successful annual summary rating twice in any 3-year period must be removed from the SES.

§ 430.313 Training and evaluation.

(a) To assure effective implementation of agency performance management systems, agencies must provide appropriate information and training to agency leadership, supervisors, and senior executives on performance management, including planning and appraising performance.

(b) Agencies must periodically evaluate the effectiveness of their performance management system(s) and implement improvements as needed. Evaluations must provide for both assessment of effectiveness and compliance with relevant laws, OPM regulations, and OPM performance management policy.

(c) Agencies must maintain all performance-related records for no fewer than 5 years from the date the annual summary rating is issued, as required in 5 CFR 293.404(b)(1).

§ 430.314 OPM review of agency systems.

(a) Agencies must submit proposed SES performance management systems to OPM for approval. Agency systems must address the system standards and requirements specified in this subpart.

(b) OPM will review agency systems for compliance with the requirements of law, OPM regulations, and OPM performance management policy, including the system standards specified at § 430.305.

(c) If OPM finds that an agency system does not meet the requirements and intent of subchapter II of chapter 43 of title 5, United States Code, or of this subpart, OPM will identify the requirements that were not met and direct the agency to take corrective action, and the agency must comply.

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Subpart D—Performance Appraisal Certification for Pay Purposes

SOURCE: 69 FR 45550, 45551, July 29, 2004, unless otherwise noted.

NOTE TO SUBPART D: Regulations identical to this subpart appear at 5 CFR part 1330, subpart D.

§ 430.401 Purpose.

(a) This subpart implements 5 U.S.C. 5307(d), as added by section 1322 of the Chief Human Capital Officers Act of 2002 (Title XIII of Public Law 107–296, the Homeland Security Act of 2002; November 25, 2002), which provides a higher aggregate limitation on pay for certain members of the Senior Executive Service (SES) under 5 U.S.C. 5382 and 5383 and employees in senior-level (SL) and scientific or professional (ST) positions paid under 5 U.S.C. 5376. In addition, this subpart is necessary to administer rates of basic pay for members of the SES under 5 U.S.C. 5382, as amended by section 1125 of the National Defense Authorization Act for Fiscal Year 2004. The regulations in this subpart strengthen the application of pay-for-performance principles to senior executives and senior professionals. Specifically, the statutory provisions authorize an agency to apply a higher maximum rate of basic pay for senior executives (consistent with 5 CFR part 534, subpart D, when effective) and apply a higher aggregate limitation on pay (consistent with 5 CFR part 530, subpart B) to its senior employees, but only after OPM, with OMB concurrence, has certified that the design and application of the agency's appraisal systems for these employees make meaningful distinctions based on relative performance. This subpart establishes the certification criteria and procedures that OPM will apply in considering agency requests for such certification.

(b) Senior executives generally may receive an annual rate of basic pay up to the rate for level III of the Executive Schedule under 5 U.S.C. 5382 and 5 CFR part 534, subpart D, when effective. Senior employees generally may receive total compensation in a calendar year up to the rate for level I of the Executive Schedule under 5 U.S.C.